

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	

**REPLY COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

Through the undersigned and pursuant to Section Rules 1.415 and 1.419,¹ of the rules of the Federal Communications Commission (FCC), the United States Telecom Association (USTA)² hereby submits reply comments in the FCC docket regarding high-cost universal service support and the eligible telecommunications carrier (ETC) designation process.³

DISCUSSION

The federal universal service fund (USF) is under strain. One of the main reasons is that the FCC and state commissions are granting an increasing number of companies ETC status. Payments of high-cost USF support to competitive ETCs (CETCs) has increased seven times in just under two years.⁴ Although required by law to assess whether the public interest is served by multiple ETCs in areas served by rural telephone companies,⁵ state commissions are granting CETC designations for the sake of spurring on competition, regardless of whether these

¹ 47 C.F.R. § 1.415 and § 1.419.

² USTA is the nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data, and video services over wireline and wireless networks.

³ *See Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High Cost Universal Service Support and the ETC Designation Process*, Public Notice, CC Docket No. 96-45, FCC 03J-1 (rel. Feb. 7, 2003) (Public Notice).

⁴ *See* USTA Comments at n. 8.

⁵ Section 214(e)(2) of the Communications Act of 1934, as amended (the Act), states, "Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest."

designations serve the public interest. Competition among multiple service providers in high-cost rural markets is not the goal of universal service policy. Ubiquitous, affordable telecommunications service is. USF support is a cost-recovery mechanism that is necessary to keep telephone rates in high-cost areas comparable to rates in other parts of the country.⁶ To that end, all ETCs must be able to provide critical infrastructure capable of providing qualifying services reasonably comparable to service provided in lower cost areas. Nonetheless, state commissions are using universal service to encourage what they perceive to be competition in the form of complimentary wireless services rather than to ensure ubiquitous service. Artificially induced competition allows CETCs to reap the benefits of USF support even if not justified by their costs. While incumbent local exchange carriers (ILECs) must demonstrate that they use high-cost USF support to fund maintenance and expansion of their network facilities, CETCs have been able to use USF support simply to boost profits. Industry analysts recognize that granting CETCs has, as one analyst puts it, “extraordinary potential for abuse and disruption of the current rural markets, by affecting the size of the [universal service] fund, creating businesses that are founded on ‘regulatory revenues’ rather than on regulatory formulas tied to investment levels (allowed rates of return), and possibly damaging the incumbent carriers as customers are siphoned away from already-sparse service areas.”⁷ Another industry analyst has characterized

⁶ Section 254(b)(3) of the Act requires the FCC to base policies for the preservation and advancement of universal service on the principle that consumers in all regions of the country, including high-cost areas, should have access to telecommunications services that are “reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”

⁷ *Legg Mason Universal Service Financial Analysis* (April 28, 2003) at 9.

the increasing share of USF support to CETCs as proof of “the opportunity for rural wireless carriers to supplement organic EBITDA with high-margin subsidies.”⁸

To ensure ubiquity of service, USTA continues to advocate the following principles: (1) USF support should be used to support all lines, not just primary lines; (2) USF support to CETCs in high-cost areas should be based on the total embedded costs of the ILEC network providing USF-eligible services; (3) the FCC must strengthen ETC eligibility requirements to guide the states in their application of public interest principles to ensure that the public interest is served by the designation of multiple ETCs in a high-cost area; and (4) states must fund additional support obligations arising from multiple ETCs.

Support Should not be Limited to Primary Lines

Several commenters argue for limiting USF support to primary residential and business lines. The National Association of State Utility Consumer Advocates (NASUCA) states that the vast majority of CETC lines are secondary lines, especially when a CETC is a wireless carrier, and that support for multiple lines does not materially advance the goals of universal service.⁹ AT&T Corp. (AT&T) states that an increasing source of growth of the fund is growth in the high-cost support for wireless services that provide second, third, or fourth connections to households or businesses.¹⁰ To slow growth of the fund, NASUCA would limit support to one line per household or business and have carriers compete for the designation as primary carriers.¹¹ AT&T believes that limiting high-cost support to a single connection to the home or business is the best way to strike a reasonable balance between adequacy of support and burden

⁸ Solomon Smith Barney, *Wireless EDGE Weekly* (Jan. 31, 2003); *See also* Public Notice at n. 43, citing Solomon Smith Barney report finding that wireless carriers treat high-cost funding as an incremental revenue source that represents “almost all margin.”

⁹ NASUCA Comments at 5-6.

¹⁰ AT&T Comments at 6.

¹¹ NASUCA Comments at 5-6.

on contributors. While USTA agrees with AT&T and NASUCA that the growth in supported wireless multiple lines is almost sure to continue and that something must be done to slow this drain on the universal service fund, USTA does not agree that limiting support to the primary line is an advisable way of slowing down this growth because it is administratively unfeasible, would increase the cost of service to consumers, and would threaten the continued availability of critical infrastructure in rural areas.

The administrative burden of determining what line to a household or business is the primary line is considerable. There exists no master database of wireless and wireline customer information from which carriers can cull primary line information. ILECs are not in a position to monitor the living habits of their customers. They cannot easily determine whether a particular residence has been divided, whether more than one household occupies a residence, or whether individuals are co-existing in the same residence. It would be especially difficult for ILECs to determine which line is the primary line in residences in which individuals in the same family, including adult children, have separate telephone lines or when individuals co-habitate or are married but have different last names. ILECs cannot easily determine whether their customers own additional residences in another carrier's service area, or if they own residences in more than one spouse's name. Most billing information is not detailed enough to provide such information, and investigating a consumer to obtain this information would raise privacy issues. Many service providers would have no means, other than asking their customers, to determine whether a request for service involves a primary or secondary connection. Customer self-certification is not reliable because customers might be less than forthright if enticed by the possibility of a significant discount on their monthly telephone bill.

In addition to raising carriers' administrative costs, limiting support to primary lines would result in higher charges to rural households and businesses for any additional line, which

is contrary to the aims of the Act. As OPASTCO notes, limiting support to primary lines would make the cost of additional lines unaffordable to many consumers in high-cost areas in violation of section 254(b)(1) of the Act. In addition, it would make rates incomparable to those in urban areas contrary to section 254(b)(3) of the Act.¹²

Finally, any mechanism to determine the number of residences or access lines owned by each subscriber would be so complex and cumbersome that it could not be implemented in a cost-effective manner, which would have the effect of reducing carriers' net amount of USF support. Limiting cost-recovery for additional lines would have the effect of limiting carriers' ability to invest in their networks, and this would threaten the continued availability of critical infrastructure in rural areas.

Support Should be Based on ILEC Costs

USTA believes that USF support should continue to be used to recover the embedded costs of rural ILEC networks providing USF-eligible services. Some suggest that USF support should be divorced from ILECs' embedded costs because this reduces ILECs' incentives to control costs.¹³ This suggestion ignores the fact that ILEC telephony operations are regulated by the FCC and state commissions, whose job it is to ensure that rates are reasonable, recoverable costs are justified, and facilities are used and useful. There is no real risk of rural ILECs inflating their costs under such a pervasive regulatory scheme. Real expenses require that support be based on actual, embedded costs, or rural customers will be in jeopardy of losing access to affordable local telephone service. Furthermore, as CenturyTel and others point out, CETCs, which are regulated as non-dominant carriers, have strong economic incentives to service only the lowest-cost customers in a study area while ILECs, which are regulated as

¹² OPASTCO Comments at 37.

¹³ See, e.g., WorldCom Comments at 3.

dominant carriers of last resort, must provide service on demand to all customers in a study area when no other carrier will.¹⁴ This alone is reason to enough to base the level of USF support on embedded costs of rural ILEC networks.

Nextel has said that rural ILECs have no legal entitlement to collect their embedded network costs through the universal service fund and that their needs should be based on forward-looking economic costs.¹⁵ Currently, ILECs are legally entitled to recover their embedded costs. The FCC has not adopted a USF support mechanism for rural telephone companies serving high-cost study areas based on forward-looking costs. USTA urges the FCC to continue to base support on embedded costs for the reasons originally cited by the Rural Task Force.¹⁶

- (1) The current mechanism has a record of successful performance. It is a known and predictable mechanism that has demonstrated the ability to provide sufficient universal service over the long term and to produce reasonably comparable rates.
- (2) The current mechanism is relatively easy to administer.
- (3) The current mechanism is a technologically neutral way of providing incentives for a wirelines and wireless rural carriers to invest in the modernization of their telecommunications plant. It has enabled small carriers to provide new technologies at the same time those technologies were being introduced in urban areas.
- (4) By using the costs actually incurred by ILECs in building the network and providing service, the current mechanism fully recognizes varying geographic and

¹⁴ CenturyTel Comments at 26-27.

¹⁵ Nextel Comments at 11.

weather conditions, changing labor and material markets, changing market demand, regulatory service requirements, the uncertainties in building facilities to meet projected long-term demand and other factors that are encountered in constructing and maintaining a telecommunications network.¹⁷

While USTA does not necessarily disagree with comments such as those of OPASTCO and others that basing support on ILEC costs could result in excessive USF support for some CETCs,¹⁸ USTA believes that the alternative - creating a cost proxy model for CETCs - is unduly burdensome. As BellSouth points out, cost information for CETCs is not readily available.¹⁹ If CETCs' costs were used for the basis of USF support, the FCC would have to establish a reporting mechanism to ensure accurate cost accounting by CETCs. Basing support on ILEC costs continues to be the least burdensome way to administer USF support.

USTA does not view vouchers or auctions as viable cost-recovery mechanisms because they provide fragmented support insufficient to sustain rural networks. Sprint recommends that the FCC consider a customer voucher or credit system for USF support, arguing that a voucher system would eliminate many of the administrative costs of the current system, such as those associated with performing cost studies or complying with reporting requirements, which might allow carriers to reduce the prices they charge customers.²⁰ USTA does not agree that the FCC should consider a voucher system because such a system is inconsistent with the principles of the Act, which require "specific, predictable, and sufficient" USF support mechanisms.²¹ If customers receive vouchers, companies will have to collect USF support from those customers.

¹⁶ The Rural Task Force is an independent advisory panel established by the Federal-State Joint Board on Universal Service to provide guidance on issues affecting rural telephone companies.

¹⁷ Rural Task Force, *White Paper 3: Competition and Universal Service* (Aug. 2000) at 29.

¹⁸ OPASTCO Comments at 11-13.

¹⁹ BellSouth Comments at 8. *See also* USTA Comments at 5-6.

²⁰ Sprint Comments at 15. *See also* Western Wireless Comments at 18.

This will not lower customers' costs, as Sprint suggests, since companies will have to bill customers for USF support, and is not a reliable source of support for companies who will have to collect USF payments from customers who might pay late or fail to pay altogether. Furthermore, because only one voucher per household or business is likely to be allotted, a voucher system would suffer from many of the same infirmities from which a system restricting support to primary lines only would suffer. An unreliable means of USF support is inconsistent with companies' need to invest in their networks to maintain ubiquitous service. Similarly, USTA, along with most parties commenting in this proceeding, opposes the use of auctions to determine eligibility for or amounts of USF support because auctions would produce uncertainty and instability. USTA agrees with the Western Alliance that carriers make investments in the telecommunications infrastructure on the basis of long-term plans and recover their investments over long periods of time. If auctions are implemented, they will create uncertainty as to whether investment costs would continue to be recoverable, and this will discourage infrastructure investment.²²

ETC Designation Requirements Must be Strengthened

CTIA and Western Wireless are virtually alone among commenters in urging the FCC to oppose the adoption of any prescriptive federal guidelines for the state ETC designation process.²³ They argue that state commissions have for the most part correctly applied the public interest test. USTA agrees with the comments of BellSouth, CenturyTel, NASUCA, NTCA, OPASTCO, Western Alliance and others²⁴ who argue that to ensure continued viability of the universal service high-cost fund, the FCC should delineate specific requirements for designating

²¹ 47 U.S.C. § 254(b)(5)

²² Western Alliance Comments at 21.

²³ CTIA Comments at 10. Western Wireless Comments at 13.

ETCs in rural areas and should provide explicit federal guidance to state commissions for conducting the public interest analysis required in Section 214(e)(2) of the Act. Western Alliance notes that the FCC and state commissions have “routinely rubber-stamped requests for designations of CETCs in rural telephone service areas often on little more than bare assertions that CETCs will promote competition or increase consumer choices.”²⁵ USTA agrees with CenturyTel that states have been cavalier in conferring ETC status because state regulators view new CETCs as providing services that are complementary to services provided by ILECs, assuming that the ILECs will always act as a backstop to inferior CETC services.²⁶ This, however, is imprudent given the severe economic climate in which many ILECs and the telecommunications industry as a whole find themselves. Furthermore, there is no reason to attempt to artificially encourage competition in high-cost areas through the liberal granting of ETC status because, as OPASTCO notes, effective intermodal competition exists in rural telephone companies’ service areas, as evidenced by the flat line growth of ILECs and the decline in wireline network use.²⁷

States Should Fund Multiple ETCs

Finally, USTA continues to advocate that states that designate additional ETCs must fund additional USF support obligations arising from these multiple ETCs. This would slow the use of USF high-cost support as a revenue source to pad wireless carriers’ bottom line. If states are required to raise the additional funds necessary to support multiple ETCs, they will be less inclined to designate multiple ETCs they do not serve the public interest.

²⁴ BellSouth Comments at 3-4, CenturyTel Comments at 18, NASUCA Comments at 8-9, NTCA Comments at 22-23, OPASTCO Comments at 44, Western Alliance Comments at 11.

²⁵ Western Alliance Comments at 9. *See also* USTA Comments at 12-13.

²⁶ CenturyTel Comments at 22.

CONCLUSION

The current mechanism for determining high-cost USF support has been successful in supporting universal service in rural, high-cost areas. The universal service fund is strained because state commissions are using the public interest test to foster competition for its own sake regardless of whether it ensures universal service. The way to relieve this strain is not to scrap the current system and move to a new system based on forward-looking costs or some other model. The way to relieve the strain is to continue USF support for all lines based on the embedded costs of the ILEC network while requiring state public utility commissions to adhere to stricter standards for designating multiple ETCs and to fund USF support for multiple ETCs.

Respectfully submitted,

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²⁷ OPASTCO Comments at 3-6. *See also* USTA Comments at 9-10.

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I hereby certify that a copy of Comments of the United States Telecom Association was served on this second day of June 2003 by electronic delivery or first class, postage prepaid mail to the persons listed below.

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